

IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD "D" BENCH

**Before: Smt. Annapurna Gupta, Accountant Member
And Shri T.R. Senthil Kumar, Judicial Member**

**ITA No. 1149/Ahd/2019
Assessment Year 2015-16**

Golden Star Designer Pvt. Ltd., A-301, Time Square Building, Opp. Ratnam Building, C.G. Road, Ahmedabad PAN: AADCG3807H (Appellant)	Vs	Income Tax Officer, Ward-2(1)(1), Ahmedabad (Respondent)
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**Assessee Represented: Shri S.N. Divetia, &
Shri Samir Vora, A.Rs.
Revenue Represented: Ms. Neeju Gupta Sr.D.R.**

Date of hearing : 06-09-2023
Date of pronouncement : 17-11-2023

आदेश/ORDER

PER : T.R. SENTHIL KUMAR, JUDICIAL MEMBER:-

This appeal is filed by the Assessee as against the appellate order dated 26.04.2019 passed by the Commissioner of Income Tax (Appeals)-2, Ahmedabad arising out of the levy of Penalty under section 271(1)(c) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') relating to the Assessment Year (A.Y) 2015-16.

2. The brief facts of the case is that the assessee is a Private Limited Company engaged in the business of Gold, Gold Ornaments and Job work. For the Assessment Year 2015-16, the assessee filed its Return of Income on 02.10.2015 declaring total income of Rs. 5,69,750/-. There was a survey action u/s. 133A in the business premises of the assessee on 26.09.2016, during which the Director of the assessee company admitted in his statement that the immovable property being office building was sold for Rs. 1.61 crores and received of Rs. 25,00,000/- in cash as on-money, which was not accounted in its books. The assessee admitted that the undisclosed cash vide his letter dated 14.08.2017 and filed a revised computation declaring the total sale consideration as Rs. 1.61 crores and admitted capital gain of Rs. 2,36,673/-, whereas in the original return the assessee claimed Short Term capital loss of Rs. 22,60,327/- as the very same property. The Assessing Officer recomputed and determined the capital gain as Rs. 2,36,673/-. The A.O. also found that assessee failed to offer rental income of Rs. 2,15,776/- received from Union Bank of India in the Return of Income. Thus the A.O. determined the total income as Rs. 10,22,210/- and also initiated penalty proceedings for furnishing inaccurate particulars.

2.1. The Assessing Officer issued show notice dated 27.02.2018 as to why not levy penalty for concealment of income or furnishing inaccurate particulars of income The assessee filed reply dated 16.03.2018 explaining that disclosure of Rs. 25,00,000/- made during survey proceedings was to buy a peace of mind and not to go for long drawn litigation. As far as the rental income is

concerned, the same was shown in the balance sheet and also TDS on rental income but inadvertently left out while preparing the Return of Income by the Tax Consultant, so there was no intention of concealing or furnishing inaccurate particulars of income. The above explanation of the assessee was found to be not satisfactory to the A.O., since the impugned addition were discovered only after the survey proceedings. Therefore the A.O. imposed minimum penalty of Rs.8,38,246/- for concealment of income.

3. Aggrieved against the same, the assessee filed an appeal before Commissioner of Income Tax (Appeals) and reiterated the submissions made before the A.O. and also relied upon various case laws. The Ld. CIT(A) considered the above submissions of the assessee however following Jurisdictional High Court judgment in the case of Snita Transport Pvt. Ltd. vs. ACIT reported in 42 taxmann.com 54 and Hon'ble Supreme Court Judgment in the case of Mak Data Pvt. Ltd. vs. CIT reported in 38 taxman.com 448 rejected the contention of the assessee and confirmed the levy of penalty.

4. Aggrieved against the same, the assessee is in appeal before us raising the following Grounds of Appeal:

1.1 The order passed u/s 250 dated 26-4-2019 by CIT(A)_2 A'bad confirming penalty imposed by AO u/s 271(1)(c) for concealment of income of Rs.8,38,246/- in respect of additions towards understated price on sale of property and undisclosed rental income is wholly illegal, unlawful and against the principles of natural justice.

2.1 The Ld. CIT(A) has grievously erred in law and or on facts upholding that the appellant had deliberately concealed income and thereby committed default u/s.271(1)(c).

2.2 That Ld CIT(A) has grievously erred in law and on facts in upholding that there was concealment of income towards sale of office premises and property income.

2.3 That in the facts and circumstances of the case as well as in law, the Ld. CIT(A) ought to have held that the appellant had deliberately concealed income and thereby committed default u/s.271(1)(c).

3.1 That Ld CIT(A) ought not to have confirmed the penalty in as much as that recording of satisfaction of penalty proceedings and imposing penalty are on different premise so that it is liable to be quashed.

It is, therefore, prayed that penalty of Rs.8,38,246/- confirmed CIT(A) deserves to be deleted.

5. Ld. Counsel Mr. S.N. Divetia appearing for the assessee filed a Paper Book running to 51 pages and submitted that the assessee voluntarily declared the receipt of 'on-money' during the course of survey proceedings and also filed a revised computation declaring the total sale consideration as Rs. 1.61 crores and computed the Short Term Capital Gain of Rs. 2,36,673/-. Similarly the rental income from Union Bank of India though the same was shown in the balance sheet, however by inadvertent mistake, the same was not taken in the computation of income but necessary TDS was effected. The assessee has accepted this calculation mistake and paid tax thereon. Thus the assessee has disclosed for getting mental peace so there is no question of furnishing inaccurate particulars of income and penalty levied is hereby liable to be cancelled.

6. Per contra, Ld. Sr. D.R. Ms. Neeju Gupta appearing for the Revenue supported the order passed by the Lower Authorities. The findings arrived by the Lower Authorities does not require any interference and the Penalty is liable to be upheld.

7. We have given our thoughtful consideration and perused the materials available on record. The assessee is a Private Limited Company engaged in the business of Gold, Gold Ornaments and Job works who's having a turnover of Rs. 19,00,62,190 ad declared total income of Rs. 5,69,750/- for the present Assessment Year 2015-16. On sale of commercial property, the assessee declared the sale value as Rs. 1.36 crores and computed a capital loss of Rs. 22,60,327/- and filed its Return of Income on 03.10.2015. There was a survey action in the business premises of the assessee on 26.09.2016 during the course of survey, the Director of the company admitted the 'on-money' receipt of Rs. 25,00,000/- on sale of the commercial property. Unless there would not have been a survey action in the business premises of the assessee, this undisclosed income of Rs. 25,00,000/- would not have come to surface. Further the assessee in its Return of Income declared only Rs. 1.36 crores and claimed a capital loss of Rs. 22.6 Lacs. The above submission is not accepted for the reason that the assessee is a Private Limited Company and duly gets its books audited, which is having a business turnover of Rs. 19 crores. Unless there would not have been a survey action in the business premises of the assessee, the undisclosed income of Rs. 25,00,000/- received as on-money would not have come to light. Thus the act of the assessee is clearly amounts to deliberate concealment.

7.1. It is further seen from the Return of Income, the assessee has concealed the on-money receipt and also computed a capital loss of Rs. 22,60,327/- on sale of the commercial property. The assessee had accepted and admitted the above unaccounted income during

the course of survey. The above addition would not have been taxed, unless there was a survey action or regular assessment proceedings initiated by the Revenue and the same amounts to concealment of income.

7.2. The Hon'ble Supreme Court in the case of Dilip N Shroff vs. JCIT reported in [2007] 6 SCC 329, According to Law Lexicon, the word "conceal" means:

"to hide or keep secret. The work "conceal" is con + celare which implies to hide. It means to hide or withdraw from observation to cover or keep from sight; to prevent the discovery of; to withhold knowledge of. The offence of concealment is, thus, a direct attempt to hide on item of income or a portion thereof from the knowledge of the income-tax authorities."

"not accurate, not exact or correct; not according to truth; erroneous; as an inaccurate statement, copy of transcript."

7.3. The facts in the present case are squarely identical with that of the Supreme Court Judgment in the case of Mak Data Pvt. Ltd. (cited supra) wherein the levy of penalty was upheld observing as follows:

".....The surrender of income in this case was not voluntary in the sense that the offer of surrender was made in view of detection made by the AO in the search conducted in the sister concern of the assessee. In that situation, it cannot be said that the surrender of income was voluntary. AO during the course of assessment proceedings had noticed that certain documents were impounded in the course of survey proceedings under Section 133A, in the case of a sister concern of the assessee. The survey was conducted more than 10 months before the assessee filed its return of income. Had it been the intention of the assessee to make full and true disclosure of its income, it would have filed the return declaring income inclusive of the amount which was surrendered later during the course of the assessment proceedings. Consequently, it was clear that the assessee had no intention to declare its true income. It was the statutory duty of the assessee to record all its transactions in the books of account, to explain the source of payments made by it and to declare its true income in the return of income filed by it from year to year. The AO, in our view, has recorded a categorical finding that he was satisfied that the assessee had concealed true particulars of income and is liable for penalty proceedings under Section 271 read with Section 274. The AO has to satisfy whether the penalty proceedings be initiated or not during

the course of the assessment proceedings and the AO is not required to record his satisfaction in a particular manner or reduce it into writing. No illegality was found in the department initiating penalty proceedings in the instant case. Therefore, the view of the High Court was fully agreed.”

7.4. The Ld. CIT(A) has considered in detail and then followed Jurisdictional High Court judgment in the case of Snita Transport Pvt. Ltd. (cited supra), wherein it was held as follows:

“...”6. Counsel for the assessee vehemently contended that assessee having made full disclosures in the revised return, the authorities erred in holding that this was a case of concealing particulars of income. He submitted that even if return, for the purpose of assessment was held to be invalid, declarations made in such a return cannot be wiped out. Counsel further submitted that even if the Tribunal had in the assessment proceedings come to the conclusion that such return was invalid Ipso facto it would not mean that penalty must follow, Counsel next contended that the Assessing Officer in his order of assessment directed initiation of penalty proceedings for concealment of particulars of income or furnishing inaccurate particulars. He submitted that such action was opposed to the ratio laid down by this Court in case of CIT v. Manu Engg Works [1980] 123 [TR 306 (Guj.).

7. We are however of the opinion that in the impugned judgment, the Tribunal has committed no legal error. To recapitulate, the assessee had filed original return of income declaring the total income of Rs. 9,86,384/-, It was only when a survey was conducted on 30-1-2003 that the assessee filed revised return-on 11.3.2003 declaring total income of Rs. 90,69,750/-. Such return was rejected as invalid. The Assessing Officer, Commissioner (Appeals) as well as Tribunal came to the conclusion that requirements of section 139(5) of the Act were not fulfilled. It was not a case where the assessee had discovered some inadvertent omission or an unintended wrong statement which had crept up in the return filed. It was found that the assessee was even at the time of filing of return aware of the falsity of the statement and incorrectness of particulars of income. Quite apart from such findings of the Assessing Officer and the Commissioner (Appeals) which came to be upheld by the Tribunal during the course of assessment, there was nothing further on record during the penalty proceedings to show that in the original return the assessee was not aware about such gross concealment of the income, In fact, it has come on record that the assessee had admitted bogus entries in the accounts and thereby concealing sizeable income. The Tribunal rejected the assessee's contention that the Directors of the company were somewhat illiterate and therefore, did not understand the intricacies of law as well as of account. It was found that the company had turnover of more than Rs. 5.94 crores. They were dealing with big corporate houses. Directors had vast experience in the line of business. Claiming huge expenditure to the tune of Rs. 1.6 crore cannot be termed to be a mere mistake. The Tribunal concluded that the assessee had debited expenses on accounts of bogus companies which was accepted by the assessee in his statement during the survey proceedings.

8. In such facts we are of the opinion that the Tribunal committed no error in confirming the penalty imposed by the Assessing Officer and confirmed by the CIT(appeals). Even if the assessee had made any further declarations in the revised return, we cannot lose sight of the fact that such return was filed only after the survey was carried out by the Revenue and further that such revised return was rejected as non-est.

9. Regarding the contention that the Assessing Officer was ambivalent regarding under which head the penalty was being imposed namely for concealing the particulars of income or furnishing inaccurate particulars, we may record that though in the assessment order the Assessing Officer did order initiation of penalty on both counts, in the ultimate order of penalty that he passed, he clearly held that levy of penalty is sustained in view of the fact that the assessee had concealed the particulars of income. Thus insofar as final order of penalty was concerned, the Assessing Officer was clear and penalty was imposed for concealing particulars of income. In light of this, we may peruse the decision of this Court in case of Manu Engineering Works (supra). In the said decision, the Division Bench came to the conclusion that language of "and/or" may be proper in issuing notice for penalty, but it was incumbent upon the Assessing Authority to come to a positive finding as to whether there was concealment of income by the assessee or whether any inaccurate particulars of such income had been furnished by them. If no such clear cut finding is reached by the authority, penalty cannot be levied. It was a case in which in final conclusion the authority had recorded that "I am of the opinion that it will have to be said that the assessee had concealed its income and/or that it had furnished inaccurate particulars of such income." It was in this respect the Bench observed that "Now the language of "and/or" may be proper in issuing a notice as to penalty order or framing of charge in a criminal case or a quasi-criminal case, but it was incumbent upon the IAC to come to a positive finding as to whether there was concealment of income by the assessee or whether any inaccurate particulars of such income had been furnished by the assessee. No such clear cut finding was reached by the IAC and, on that ground alone, the order of penalty passed by the IAC was liable to be struck down."

10. In case of *CIT v. Pearey Lal & Sons (EP) Ltd.* [2009] 308 ITR 438/177 Taxman 302, Punjab and Haryana High Court observed as under:

"13. We are in agreement with above observations. Whether satisfaction existed and was not recorded during assessment is not a matter of form but of substance and the issue has to be gone into from case to case. Absence of satisfaction could not be inferred from the fact that only words used in the assessment order are that proceedings were being separately initiated. In fact, this coupled with the findings of assessment showed the satisfaction existed in the course of assessment itself."

11. In the present case, as also noted, Assessing Officer had come to a clear finding that the penalty was required to be imposed for the assessee having concealed the particulars of income. He had not based his conclusions on the alternative namely of furnishing inaccurate particulars."

7.5. Thus the concurrent findings arrived by the Lower Authorities on the levy of penalty on STCG of Rs. 2,36,673/- and claim of Short Term Capital Loss of Rs. 22,60,237/- are hereby confirmed. Thus the grounds raised by the Assessee are devoid of merits and the same are hereby dismissed.

8. Regarding the Penalty levied on the rental income not declared in the Return of Income. It is seen from the balance sheet filed by the assessee at Page No. 28 of the Paper Book, the rental income of Rs.3,08,253/- was declared by the assessee. In the computation of income, the assessee claimed TDS of Rs. 17,064/- on the above rental income. However inadvertently the same was not shown in the computation. Thus, there is no concealment of income and escapement of tax. We find force in the above submissions of the assessee the inadvertent mistake in Return of Income. Though the rental income was not declared in the original Return of Income before completing the assessment, the assessee filed revised computation of income offering the above rental income for assessment. Therefore penalty levied u/s. 271(1)(c) on the rental income is hereby deleted.

9. In the result, the appeal filed by the Assessee is partly allowed.

Order pronounced in the open court on 17-11-2023

Sd/-
(ANNAPURNA GUPTA)
ACCOUNTANT MEMBER True Copy
Ahmedabad : Dated 17/11/2023

Sd/-
(T.R. SENTHIL KUMAR)
JUDICIAL MEMBER

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण,
अहमदाबाद

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